

Briefing Note:

Protecting Human Rights Defenders from Judicial Harassment

Thailand's has repeatedly affirmed a commitment to ensuring protections for human rights defenders and upholding business and human rights principles.¹ However, human rights defenders in Thailand continue to face judicial harassment, including by companies, for exercising their rights.

Thailand's problematic criminal defamation laws are particularly used to target, harass, and attempt to silence human rights defenders in Thailand.² For example, the controversial Thai poultry company, Thammakaset Company Limited has brought at least 37 criminal defamation complaints against 22, mostly women, human rights defenders in Thailand since 2016.³

Although Thailand's National Legislative Assembly amended the Criminal Procedural Code in 2018 to allow courts to dismiss and reject complaints filed "in bad faith," Thai courts have consistently allowed cases of judicial harassment to proceed.⁴

Recommendations to Protecting Human Rights Defenders from Judicial Harassment

- Amend the criminal code to decriminalize defamation
- Urgently enact anti-judicial harassment legislation
- End all unwarranted complaints and charges against human rights defenders and others

Analysis of the Judicial Harassment of Human Rights Defenders in Thailand

Despite commitments by Thailand to protect human rights defenders and uphold business and human rights principles, human rights defenders in the country continue to face judicial harassment, including by companies, for exercising their rights.

In October 2019, Thailand was the first State in Asia to develop a National Action Plan on Business and Human Rights (NAP), committing to protect human rights defenders and prevent judicial harassment.⁵ In 2022, the Rights and Liberties Protection Department under the Ministry of Justice introduced a draft second phase NAP.⁶ The draft focuses on improving the policies and measures to protect human rights defenders from SLAPP suits, including by raising awareness about the importance of the work of human rights defenders.⁷ In August and September 2022, the Ministry of Justice held public consultations on the draft NAP; however, the cabinet has yet to pass the draft.⁸

In 2018, the National Legislative Assembly amended Section 161/1 of the Thailand Criminal Procedure Code, allowing judges to dismiss and forbid the refiling of a complaint by a private individual if the complaint is filed "in bad faith or with misrepresentation of facts to harass or take advantage of a defendant."⁹ Section 165/2 also allows the presentation of evidence to show that the complaint "lacks merit."¹⁰ Despite these amendments and specific requests for the courts to apply Section 161/1 to dismiss cases, it is not uncommon for the courts to allow these cases to proceed.¹¹

For example, Thai courts have allowed the many cases brought by Thammakaset Company Limited to proceed against multiple human rights defenders in various jurisdictions despite requests for the application of Section 161/1.¹²

The Human Rights Framework

Section 34 of the Thailand Constitution protects the right to freedom of expression, as does Article 19 of the ICCPR, to which Thailand is a state party.¹³ General Comment No. 34 of the Human Rights Committee on Article 19 of the ICCPR states that “State Parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression,” including “persons who engage in the gathering and analysis of information on the human rights situation who publish human rights-related reports.”¹⁴

Background

Since 2016, Thammakaset has brought at least 37 complaints against 22 human rights defenders, mostly women, in Thailand. The courts have dismissed or ruled against the company in most of these cases.¹⁵

One of the final remaining cases brought by Thammakaset currently pending in the Bangkok South Criminal Court involves a current Fortify Rights team member, Puttanee Kangkun, a former Fortify Rights team member, Thanaporn Saleephol, and a member of the U.N. Working Group on Enforced Disappearances, Angkhana Neelapajit.¹⁶ Thammakaset’s complaints against the three women are focused on 28 social media posts or re-posts that contain messages of solidarity for other human rights defenders facing lawsuits brought by the company with links to news releases published by Fortify Rights.¹⁷ Altogether, these three Thai women human rights defenders face 30 counts of criminal defamation, which could amount to sentences ranging from eight to 42 years in prison for 30 posts or re-posts on social media.¹⁸

Endnotes

- 1 Royal Thai Government, “Thai Government Clarifies Its Contributions to Drive the National Action Plan to Promote Business and Human Rights, Being the First Country in Asia to Draft a Law to Prevent SLAPP Lawsuits to Protect Human Rights Defenders,” January 6, 2022, <https://www.thaigov.go.th/news/contents/details/50253>.
- 2 Human Rights Lawyers Association, *Report on Recommendations to Protect Those Exercising their Rights and Liberties to Participate in Public Issues from Lawsuits*, August 11, 2019, <https://naksit.net/wp-content/uploads/2019/10/20190811-thai.pdf>.
- 3 Fortify Rights, “Thailand: Stop Judicial Harassment of Three Thai Women Human Rights Defenders,” March 14, 2023, <https://www.fortifyrights.org/tha-inv-2023-03-14/>.
- 4 *Ibid.*
- 5 Rights and Liberty Protection Department, Ministry of Justice, *National Plan of Action on Business and Human Rights Phase 1 (2019-2022)*, <https://globalnaps.org/wp-content/uploads/2017/11/nap-thailand-th.pdf>.
- 6 Ministry of Justice, “No. 9/2023 ‘RLPD to Hold Public Consultations on the Draft National Action Plan on Business and Human Rights, in Line with the UN,’” October 6, 2022, <https://www.moj.go.th/view/75952>.
- 7 *Ibid.*
- 8 *Ibid.*
- 9 The Act Amending the Criminal Procedure Code (No. 34), B.E. 2562, March 17, 2019, Section 5, http://web.senate.go.th/bill/bk_data/533-6.pdf.
- 10 Thailand Criminal Procedural Code, Section 165/2, <http://web.krisdika.go.th/data/law/law4/%BB05/%BB05-20-9999-update.pdf>.
- 11 Fortify Rights, “Thailand: Stop Judicial Harassment of Three Thai Women Human Rights Defenders,” March 14, 2023.
- 12 *Ibid.*
- 13 Constitution of the Kingdom of Thailand, April 6, 2017, <https://ratchakitcha.soc.go.th/pdfdownload/?id=2103519>; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), U.N. Doc. A/6316, ratified by Thailand, art. 19.
- 14 Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression*, U.N. Doc. CCPR/C/GC/34, September 11, 2011, para. 23.
- 15 Fortify Rights, “Thailand: Follow Supreme Court Precedent, Dismiss Cases of Judicial Harassment Against Human Rights Defenders,” September 22, 2021, <https://www.fortifyrights.org/tha-inv-2021-09-22/>
- 16 Fortify Rights, “Thailand: Stop Judicial Harassment of Three Thai Women Human Rights Defenders,” March 14, 2023.
- 17 *Ibid.*
- 18 *Ibid.*